

## SEPARATION AGREEMENT AND RELEASE

This Separation Agreement and Release ("Agreement") is entered into between the City of Moses Lake, and its officers, elected officials, employees, agents, and insurers (collectively referred to as the "City") and John Williams ("Williams"). The City and Williams are sometimes referred to collectively as the "Parties." Therefore, the City on the one hand and Williams on the other hand, intending to be legally bound, agree as follows:

1. **No Admission of Liability.** The Parties agree that this Agreement is not an admission by the other party that it has violated any law or failed to fulfill any duty to one another.
2. **Separation from Employment.** Williams and the City agree that the employment relationship between the parties shall terminate and cease effective June 11, 2019 (the "Separation Date"). On the Separation Date, Williams's Employment Agreement entered into in December 2015, and any and all amendments thereto (the "Employment Agreement"), will automatically terminate, and Williams acknowledges and agrees that he will not be entitled to any of the benefits set forth in the Employment Agreement. Williams acknowledges and agrees that pursuant to this Agreement, he will tender his resignation, which will be attached to this Agreement as Attachment A.
3. **Separation Payment.** As consideration for entering into this Agreement, the City agrees that it will pay Williams the following:
  - a. **Severance Payment:** The equivalent of six (6) months' salary in the amount of \$84,167.00 (Eighty-Four Thousand One Hundred Sixty-Seven dollars and no/100), to be paid in six monthly installments per the City's current payroll schedule. These payments shall be subject to lawful deductions. This payment under Section 3.a is defined as the "Severance Payment."
  - b. **COBRA Premiums:** A payment for Williams' COBRA coverage for his own and his dependents medical/dental/vision/orthodontia premiums under the City's existing health care plan and consistent with his coverage under Section C of the Employment Agreement, for up to six (6) months, as allowed under COBRA, as long as Williams completes all required documentation to obtain such coverage. Any amounts under this paragraph 3.b. will be paid directly to the City's provider(s) out of Williams' Accrued Leave Cash Balance, defined below in Section 3.c. No payment under this Paragraph 3.b. will be made by the City prior to the Effective Date. Nothing in this paragraph is intended to or does create any other rights or obligations of any kind on the part of the City with regard to payment of Williams' COBRA coverage, except those specifically required by law.
  - c. **Accrued Leave Cash Balance:** A payment for 100% of his unused accrued vacation and floating holidays, and 75% of his unused sick leave, all subject to lawful deductions and also less deductions paid for COBRA Premiums, as outlined in Section 3.b. As of June 11, 2019, Williams will have 354.4 hours of accrued sick leave (equivalent to  $\$28,681.59 \times .75 = \$21,511.19$  gross), 421.96 hours of vacation leave (equivalent to \$34,149.22 gross), and 2 floating holidays

at \$1,294.88 gross), and the total amount of his gross "Accrued Leave Cash Balance" will be \$56,955.29 (which is equivalent to 75% of Williams' accrued sick leave and 100% of his accrued vacation leave and floating holidays, paid at a rate of \$80.93). The City will pay the remaining balance of the Accrued Leave Cash Balance to Williams after all COBRA Premiums have been paid from it, by December 10, 2019. The payment of the Accrued Leave Cash Balance will be subject to lawful deductions.

The Severance Payment and payment of COBRA Premiums shall cease immediately upon Williams' full-time employment during the severance payment period in a similar position with comparable pay. Williams will be paid the remaining balance of any Accrued Leave Cash Balance not applied to health insurance premiums regardless of his employment status. Williams acknowledges and agrees he will not waive any opportunity to obtain health benefits, and further agrees that he will promptly notify the City in the event he does obtain such benefits. Williams further understands and agrees that no further contributions shall be made to any retirement system on behalf of Williams after the Separation Date, nor will he accrue any additional benefits after the Separation Date.

Williams acknowledges and agrees that he would not otherwise be entitled to any of the payments identified in this paragraph 3, and that any payments identified herein are in consideration for entering into this Agreement. Williams further understands and agrees that he will not receive any of the compensation outlined in this Agreement unless he executes this Agreement. Williams also understands and agrees that this Agreement supersedes the Employment Agreement and any benefits or payments under this Agreement are not in addition to any benefits that may have been owed to Williams under the Employment Agreement.

4. **Press Release.** The Parties agree that the City will release a mutually agreed upon press release in the form of Attachment B to this Agreement announcing Williams' separation from the City.
5. **Release.** Williams specifically acknowledges and accepts the City's undertakings in this Agreement as full settlement of any and all claims, known or unknown, arising out of or related to Williams' employment or association with the City, including his separation from employment. This release by Williams includes, but is not limited to, any claims for damages or attorney's fees, breach of contract and/or estoppel, lost equity-based compensation or lost salary or other benefits, libel, slander, fraud, misrepresentation, or wrongful discharge, discrimination and/or retaliation under any federal, state or local statute or regulation, specifically including, but not limited to, any claims Williams may have under the Fair Labor Standards Act, the Age Discrimination in Employment Act ("ADEA"), the Americans with Disabilities Act, Title VII of the Civil Rights Act, as amended, the Family and Medical Leave Act, the Washington Minimum Wage Act, the Washington Law Against Discrimination, and the Employee Retirement Income Security Act of 1974 (other than claims for vested benefits). These claims are examples, not a complete list, of the released claims, as it is the Parties' intent that Williams release any and all claims, of whatever kind or nature, in exchange for the consideration by the City identified in this Agreement. The Parties realize this constitutes a full and final

settlement of any and all such claims, and except for obligations arising under this Agreement or as otherwise outlined in Paragraph 4.b., this Agreement releases the City (including the City's elected officials, councilmembers, officers, directors, employees, agents, and insurers, and anyone else against whom Williams could assert a claim based on Williams's association with the City, including his separation from employment) from any further liability to Williams (or to anyone else Williams has the power to bind in this Agreement) in connection with such claims.

Nothing in this Agreement prohibits or prevents Williams from filing a charge with or participating, testifying, or assisting in any investigation, hearing, or other proceeding before any federal, state, or local government agency, or otherwise limit, in any way, Williams's rights and abilities to contact, communicate with, report matters to, or otherwise participate in any whistleblower program administered by any such agencies. However, to the maximum extent permitted by law, Williams agrees that if such an administrative claim is made, he shall not be entitled to recover any individual monetary relief or other individual remedies.

6. **ADEA Release.** Williams acknowledges and agrees that he is also waiving and releasing any rights he may have against the City under the Age Discrimination in Employment Act ("ADEA") and that this waiver and release is knowing and voluntary ("waiver and release" in this paragraph 6 is referred to as "ADEA Release"). Williams acknowledges and agrees that he has been advised by this writing that (a) this ADEA Release does not apply to any other rights or claims that may arise after the execution date of this Agreement; (b) he should consult with an attorney prior to executing this Agreement; (c) he has twenty-one (21) days within which to consider this Agreement (although he may choose to voluntarily execute this Agreement and to waive such period of consideration); (d) he has seven (7) days following the execution of this Agreement to revoke this ADEA Release; (e) the ADEA Release shall not be effective until the revocation period has expired (the "Effective Date"); and (f) nothing in this Agreement prevents or precludes Williams from challenging or seeking a determination in good faith of the validity of this ADEA Release under the ADEA, nor does it impose any condition, precedent, penalties or costs for doing so, unless specifically authorized by federal law. Any revocation of the ADEA Release, as set forth above, shall be in writing and delivered to the City's counsel, by close of business on the seventh (7<sup>th</sup>) day from the date that Williams signs this Agreement, at the following address:

Katherine Kenison  
Lemargie Kenison Franz And Whitaker  
107 D Street NW  
P.O. Box 965  
Ephrata, WA 98823  
Facsimile: (509)754-4022

Williams understands and agrees that if he revokes this ADEA Release pursuant to this paragraph 6, the City may determine, in its sole discretion, that the Agreement is not effective and/or enforceable and Williams will not be entitled to any of the benefits set forth in this Agreement.

7. **Tax Liability.** Williams specifically acknowledges and agrees that the City has made no representations to him, regarding the tax consequences of any amounts received by Williams for Williams's benefit pursuant to this Agreement. Williams understands and agrees that any tax consequences and/or liability arising from the benefits identified in this Agreement shall be his sole responsibility. Williams specifically acknowledges and agrees that he will not at any time in the future seek consideration from the City other than as set forth in this Agreement.
8. **Cooperation.** After the Separation Date, and for the duration of Williams's receipt of any payments from the City under this Agreement, Williams agrees to cooperate in good faith in transferring his responsibilities at the City to other employees and otherwise ensuring a smooth transition of his former job duties, including by being available to answer questions and otherwise communicate with the City regarding issues related to the City or Williams's former job duties. Moreover, Williams acknowledges and agrees that he will cooperate with the City and its agents and/or attorneys in good faith as reasonably requested by the City, in any legal action or threatened litigation involving the City in which Williams may be a witness or otherwise have knowledge related thereto, including by providing truthful information and testimony as reasonably requested by the City. Williams further agrees that he will not voluntarily cooperate with any plaintiff or plaintiff's attorney or agent in any pending or threatened litigation against the City unless a court order compels him to do so.
9. **Non-Disparagement.** Williams agrees that neither he, nor anyone acting on his behalf, will make any negative, derogatory, or disparaging comments, whether oral or written, about the City or its elected officials, councilmembers, officers, directors, managers, or agents, in any way, now or in the future. The City agrees that the City Attorney will issue a statement to City Council members requesting that they refrain from speaking in a disparaging manner about Williams. Nothing in this Agreement shall be construed to prohibit the City's ability to comply with the requirements of chapter 42.56 RCW or any other legal requirements applicable to public entities.
10. **Confidential Information and Covenants.** Williams also agrees to hold and safeguard all confidential information in trust and confidence for the City. Williams agrees that he shall not misappropriate, disclose or make information available to any person or any entity for use outside the City. Williams also agrees that all records, data, correspondence, manuals, notes, reports, notebooks, proposals, and any other documents concerning the City and its operations received by Williams during his employment with the City are, and shall be, property of the City and shall not be disclosed.
11. **Return of City Property.** Williams acknowledges and agrees that he will return all of the City's property, including but not limited to any equipment, keys, purchasing cards, documents or confidential information in his possession or control, no later than the Separation Date of this Agreement.
12. **References.** The City agrees that as long as Williams directs all requests for references for future employment to the Interim City Manager or City Manager, the Interim City Manager or Manager will provide the dates of service, position held, and last salary for Williams. Williams understands and agrees that nothing in this paragraph is intended to

or does prevent or preclude the City from responding to requests for documents under the Public Records Act of Washington.

13. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington and each party submits to the personal jurisdiction of the Federal and/or State Courts located in Grant County, in any action or proceeding arising out of, or relating to, this Agreement and its enforcement, and agrees that all claims in respect to any such action or proceeding may be heard and determined in either such court. The Parties irrevocably waive any objection on the ground that any such action or proceeding in either of such courts has been brought in an inconvenient forum. Except as prohibited by law, the prevailing party in any lawsuit brought to enforce or interpret the terms of this Agreement, or any portion thereof, shall be entitled to recover its costs including reasonable attorneys' fees.

14. **Acknowledgments and Affirmations.**

- a. Williams affirms that he has not filed, caused to be filed, or is a party to any claim, suit, or administrative charge against the City.
- b. Williams affirms that he has been paid and has received all compensation, wages, bonuses, commissions, or benefits which are due and payable as of the date the City signs this Agreement.
- c. Williams affirms that he has been granted any leave to which the City was entitled under the Family and Medical Leave Act or state or local leave or disability accommodation laws.
- d. Williams affirms that he has no known workplace injuries or occupational diseases.
- e. Williams represents that he is not enrolled in the Medicare program, was not enrolled in the Medicare program during employment or anytime from his Separation Date through the date of this Agreement, and he has not received Medicare benefits for medical services or items related to, arising from, or in connection with the matters released herein. The City further represents and warrants that no Medicaid payments have been made to or on his behalf and that no liens, claims, demands, subrogated interests, or causes of action of any nature or character exist or have been asserted arising from or related to of the matters released in this Agreement. Williams further agrees that he, and not Releasees, shall be responsible for satisfying all such liens, claims, demands, subrogated interests, or causes of action that may exist or have been asserted or that may in the future exist or be asserted.

15. **Authority to Enter Agreement.** Williams represents and warrants that he is the true party in interest, that he is fully authorized to execute this Agreement, and that he has not, and will not, sell, assign, transfer, convey, or otherwise dispose of any rights surrendered by virtue of this Agreement.

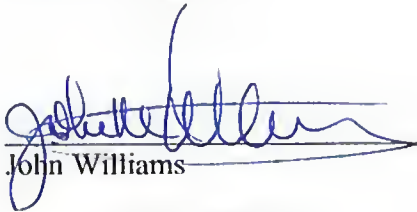
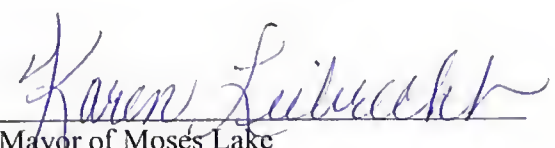
16. **Knowing Release.** Williams acknowledges that he has been advised to consult with an attorney and has had an opportunity to do so before signing this Agreement, which Williams has been given a reasonable period of time to consider.

17. **Entire Agreement.** This Agreement (i) contains the entire understanding of the Parties with respect to the subject matter covered; (ii) supersedes all prior or contemporaneous understandings including the Employment Agreement; and (iii) may only be amended in a written instrument signed by both Parties. The terms and provisions of this Agreement are contractual and not a mere recital.
18. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of any heirs, legal representatives, successors and assigns of Williams.
19. **Survival.** Williams acknowledges and agrees that if any provision of this Agreement, or compliance by Williams or the City with any provision of this Agreement, constitutes a violation of any law, or becomes unenforceable and/or void, the remaining provisions of this Agreement will remain in full force and effect.
20. **Council Review and Approval.** This Agreement was reviewed and approved by the Moses Lake City Council upon proper notice at open public meeting on June 11, 2019, by a vote of 6 for, 0 against, and 0 abstentions, with 1 council members absent, and the Mayor of the City of Moses Lake is directed to sign the Agreement on behalf of the City of Moses Lake.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

Signed, sealed and delivered this 11 day of June, 2019.

**CAUTION: READ BEFORE SIGNING BELOW**

JOHN WILLIAMS	CITY OF MOSES LAKE
	
John Williams	Mayor of Moses Lake
<u>6-10-2019</u>	<u>6/11/19</u>
Date	Date

ATTEST:

  
City Clerk

APPROVED AS TO FORM:

  
Katherine Kenison, City Attorney

**ATTACHMENT A**

**Please take note that effective June 11, 2019, I will be resigning my position as City Manager of Moses Lake to pursue other opportunities.**

## **ATTACHMENT B**

Effective June 11, 2019, John Williams tendered his resignation as City Manager for the City of Moses Lake. John has enjoyed his time as City Manager, but has decided that he wants to pursue other opportunities. He remains committed to ensuring a smooth transition of his responsibilities as City Manager and plans to continue working in cooperation with the City to ensure that there will be no interruption of any City operations for the citizens of Moses Lake. John enjoyed working with the community and city staff in Moses Lake and wishes everyone the best. The City thanks John for his service.